

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

WISCONSIN ENERGY CORPORATION, )  
INTEGRYS ENERGY GROUP, INC., PEOPLES )  
ENERGY, LLC, THE PEOPLES GAS LIGHT )  
AND COKE COMPANY, NORTH SHORE GAS )  
COMPANY, ATC MANAGEMENT INC., and )  
AMERICAN TRANSMISSION COMPANY LLC )

)  
Application pursuant to Section 7-204 of the Public )  
Utilities Act for authority to engage in a )  
Reorganization, to enter into agreements with )  
affiliated interests pursuant to Section 7-101, and for )  
such other approvals as may be required under the )  
Public Utilities Act to effectuate the Reorganization. )

Docket No. 14-0496

**RESPONSE OF JOINT APPLICANTS TO ILLINOIS ATTORNEY GENERAL’S  
AND CITY OF CHICAGO’S MOTION TO EXTEND SCHEDULE**

Wisconsin Energy Corporation (“Wisconsin Energy”), Integrys Energy Group, Inc. (“Integrys”), Peoples Energy, LLC (“PELLC”), The Peoples Gas Light and Coke Company (“Peoples Gas”), North Shore Gas Company (“North Shore”) (collectively, Peoples Gas and North Shore are referred to herein as the “Gas Companies”), ATC Management Inc. (“ATCM”) and American Transmission Company LLC (“ATCLLC”) (all, collectively, the “Joint Applicants”) hereby respond to The People of the State of Illinois’ (the “AG”) and the City of Chicago’s (the “City”) (collectively “AG/City”) Motion to Extend the Schedule (the “Motion”) as follows:

**INTRODUCTION**

The Accelerated Main Replacement Program (“AMRP”) is an important public works initiative that will enhance the reliability and safety of Peoples Gas’ distribution system for its customers, its employees, and the public. It is an initiative that the General Assembly and the Illinois Commerce Commission (the “Commission”) clearly have endorsed. Given the

importance of this program, the Joint Applicants take very seriously the concerns raised about the implementation and management of the AMRP by a variety of stakeholders, including the AG and the City. The Commission also has taken these concerns seriously, entering an Order in June 2013, at the conclusion of the last Peoples Gas rate case,<sup>1</sup> directing that there be an investigation of the AMRP by an independent engineering consultant, culminating in final investigation and verification reports that are to be presented with testimony in future Peoples Gas rate cases. This investigation is the “Liberty Audit” which forms the basis for the AG/City’s Motion.

The Joint Applicants appreciate the importance of the investigation and welcome the opportunity to address any of the findings and recommendations that result from the Liberty Audit. But pressing to have a preliminary component of the Liberty Audit inserted into this proceeding long before the audit will be completed is contrary to its intended purpose and the procedure for its use established by the Commission. The Joint Applicants look forward to open and candid discussion of the AMRP when and where appropriate, but making this holding company merger proceeding about that program rather than the statutory criteria for approving the proposed merger would be counter-productive and could result in compromising the audit itself. In short, forcing a partial consideration of the implementation issues associated with the AMRP into this proceeding would work at cross-purposes with the best use of the audit for all concerned. This is especially true in light of the fact that Liberty’s investigation remains ongoing and is incomplete, with its preliminary findings and recommendations remaining subject to change.

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<sup>1</sup> *North Shore Gas Co., The Peoples Gas Light and Coke Co. – Proposed General Increase in Rates*, ICC Docket Nos. 12-0511/12-0512 (cons.), Order (June 18, 2013) at 61 (hereinafter referenced as “*Peoples Gas 2012 Rate Case*”).

To the extent that the AG/City, Staff, and other interested stakeholders seek a forum to address the implementation of the AMRP, the Joint Applicants note that the Commission already established a process in its *Peoples Gas 2012 Rate Case* Order: the final investigation and verification reports from the Liberty Audit will be addressed in the context of Peoples Gas' future rate cases. Moreover, to the extent recommendations from the Liberty Audit touch on the cost-effectiveness and prudence of AMRP management, these issues may be addressed in Peoples Gas annual Rider QIP reconciliation cases. Further, the Joint Applicants would not oppose the Commission initiating a separate docket devoted to the implementation of recommendations from the Liberty Audit. This approach would provide an orderly and comprehensive means for all interested parties to address any concerns raised by the Liberty Audit without the statutory time limit associated with the instant proceeding. Regardless of its corporate parent, Peoples Gas would be bound to follow the Commission's orders entered in any of these proceedings.

Moreover, there are specific statutory standards that must be satisfied before the Commission can extend the statutory 11-month time limit for approving the reorganization application at issue here. Section 7-204(d) of the Illinois Public Utilities Act (the "Act") requires the Commission to enter an Order in this proceeding within 11 months, subject to limited exceptions, *i.e.*, "reasonably unforeseeable changes in circumstances subsequent to the Applicant's initial filing. . . ."<sup>2</sup> AG/City claims that an "unforeseeable confluence of circumstances" regarding the AMRP now necessitates a 3 month extension to the statutory deadline. (Motion at 2) This claim is baseless. No "reasonably unforeseeable changes in circumstances" have arisen since the Joint Applicants filed their Section 7-204 Application on

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<sup>2</sup> The Commission may also extend the proceeding up to three months to consider an amendment to the filing, but that is not the basis for the Motion and no such amendment has occurred.

August 6, 2014. The Commission's ongoing investigation of the Peoples Gas AMRP and the issuance of a *preliminary* "interim" report by the Commission's consultant auditing the program are neither changes in circumstances nor unforeseen. Liberty Consulting Group's ("Liberty") audit was initiated as a result of the Commission's June 2013 final Order in the *Peoples Gas 2012 Rate Case*. AG/City are fully aware of that Order and its requirements, as they both participated actively in that proceeding. AG/City have been aware for more than a year before the Joint Applicants filed their Application to initiate this proceeding that Liberty would be auditing the Peoples Gas AMRP and issuing various reports on the audit's progress. AG/City have also been aware since the middle of last year that the Commission will be reviewing the results of the audit and Liberty's recommendations *after the audit is completed*. Consequently, the AG/City's claim of an "unforeseeable confluence of circumstances" (Motion at 2) is not credible and they have failed to meet their burden to have the Commission extend the schedule past the statutory 11-month deadline.

The ongoing Liberty Audit and the management and operation of the Peoples Gas AMRP also are beyond the statutorily-defined scope of this proceeding. At issue here is whether Wisconsin Energy's acquisition of Integrys' common stock "will adversely affect" the Gas Companies' ability to perform their duties under the Act. 220 ILCS 5/7-204(b). The AMRP and the Liberty Audit are ongoing matters that existed before, and are independent from, Wisconsin Energy's proposed acquisition of Integrys. Moreover, the AMRP and the Liberty Audit will remain subject to the Commission's orders and supervision regardless of who Peoples Gas' ultimate parent company is. To reiterate, the Joint Applicants understand that these are important matters for the Commission, but this Section 7-204 proceeding is not the proper place to address them. Indeed, the Commission already has set forth a procedure for how and when

the findings of the Liberty Audit should be addressed, which the AG/City unnecessarily seek to duplicate here.

For these reasons, and as more fully explained below, the Commission should deny AG/City's Motion.

**I. No “Reasonably Unforeseeable Changes in Circumstances” Have Occurred Since The Joint Applicants Filed Their Application To Warrant An Extension Of The Schedule In This Proceeding Under Section 7-204(d)**

AG/City seek a three-month extension of the statutory period provided for the Commission to approve Wisconsin Energy's proposed acquisition of Integrys' common stock in this proceeding pursuant to Section 7-204(d) of the Act. Section 7-204(d) of the Act allows the Commission to extend the deadline for approving a proposed reorganization for up to three months either to consider amendments to the Joint Applicants' filing or to consider “reasonably unforeseeable changes in circumstances” subsequent to the Joint Applicants' initial filing. The Joint Applicants have not made any amendments to their August 6, 2014 filing and, contrary to AG/City's assertions, no “unforeseeable changes in circumstances” have occurred since that initial filing. Thus, Section 7-204(d)'s threshold requirements for an extension of the statutory deadline for determining whether to approve the proposed Reorganization in this proceeding have not been met.

The AG/City base their request for an extension of the schedule on the fact that as part of the first phase of its ongoing audit of Peoples Gas' AMRP, Liberty is expected to issue a preliminary “interim” report in January, 2015 on its work to date, with a final report issued in the late spring of 2015. AG/City claim that the extension of the schedule is necessary to allow the “reaction” of the Joint Applicants and Staff and Intervenors to Liberty's preliminary and final reports to be included in the record of this proceeding. (*See* Motion at ¶ 7) Putting aside the question of *whether* a Section 7-204 proceeding is the appropriate time and place for the

Commission to examine concerns about the past and ongoing implementation of a capital project (which is addressed in Part II of this Response, below), the fact that the Liberty investigation of the AMRP has been ongoing and would result in one or more reports being made public is far from being an unforeseeable change in circumstances.

The Commission directed that an investigation be conducted in its final Order issued on June 18, 2013 in the *Peoples Gas 2012 Rate Case* in response to testimony from Staff, the AG, and the City regarding Peoples Gas' implementation of the AMRP. *See Peoples Gas 2012 Rate Case* Order at 46-61. The Commission ordered that the audit be a "two-phase investigation of the AMRP . . . ending in a public document report" to be conducted as described by Staff witness Roy Buxton's rebuttal testimony submitted in that proceeding. *Id.* at 61. As explained in Mr. Buxton's rebuttal testimony, Phase I consists of the investigation itself and will result in a final investigation report that the Commission will publish on its website and be placed in the record of "a future Peoples [Gas] rate case," with the engineering consultant (*i.e.*, Liberty) providing testimony in support of the investigation report as evidence in that future rate case. (*See* Buxton Rebuttal at 3-9 for a description of the Phase I investigation and reporting process, attached hereto as Exhibit 1). This would be followed by a two-year Phase II verification period in which Liberty will work to verify that Peoples Gas implements the recommendations from the Phase I investigation. *Id.* at 3-4. Liberty will then submit testimony in support of the final report of the two-year Phase II verification process in a future Peoples Gas rate case. *Id.* at 9.

Thus, the process for and pendency of the Liberty Audit was known for *over a year* prior to the Joint Applicants filing their Application on August 6, 2014. Regardless of whether or not the Liberty audit is relevant to the Commission's consideration of the proposed Reorganization, the fact is that its pendency and the reports to be issued as a result of the audit cannot be said to

be “unforeseen” or even a change in circumstances. To the contrary, the Liberty Audit is a circumstance that was in place well before the Application initiating this proceeding was filed. Moreover, while AG/City emphasize their belief that the upcoming “interim” report from Liberty should be considered as part of this proceeding, the fact is that this document will be preliminary in nature and not reflect the full results of Liberty’s work, or the fact that Liberty’s analysis may change before the issuance of the final investigation report contemplated in the Commission’s *Peoples Gas 2012 Rate Case* Order. Indeed, as explained above, it is the recommendations from the *final* investigation report that are to be the focus of the two-year Phase II verification process. It is also clear that it is the *final* report that the Commission intended to be made public.

AG/City try to bolster their claim that an unforeseen change in circumstances has occurred based on the allegations contained in their own testimony concerning their opinions on how Peoples Gas has implemented and managed the AMRP to date. Yet, even if AG/City could create an unforeseen change in circumstances through their own allegations, nothing contained in their testimony reflects new information or a change in circumstances that has occurred since the Joint Applicants filed their Application on August 6, 2014. The examples AG/City reference from their witnesses’ testimony involve either information from Peoples Gas’ current rate case, which has been pending since before the Application was filed (*see* Motion at ¶ 9), or historical information about Peoples Gas’ performance with respect to alleged city code violations, costs, delays, coordination activities with the City, and O&M issues (*see* Motion at ¶¶ 9-10). Again, even if relevant to the Commission’s consideration of the proposed Reorganization, this information does not reflect any change in circumstances that has occurred since August 6, 2014, let alone an unforeseeable one. Also, the AG/City’s concerns over and criticisms of the implementation and management of the AMRP expressed in their testimony are similar to those

they have asserted in previous proceedings. In fact, AG/City expressed these same concerns in the *Peoples Gas 2012 Rate Case* in support of the Commission's ordering of the Liberty Audit. *See Peoples Gas 2012 Rate Case Order* at 52-60.

Further, the AG/City's description of certain information allegedly concerning the AMRP that they cite in support of their Motion is mischaracterized or misleading. To address one example<sup>3</sup>, in paragraph 9 of their Motion, AG/City state that testimony submitted by City/CUB noted that Peoples Gas has incurred substantial fines and penalties over the lifetime of the AMRP for code and ordinance violations, but then cite to Peoples Gas' payment of degradation fees for work done on moratorium streets that have been recently constructed or repaved. Doing work in a moratorium street is not a code or ordinance violation, and degradation fees are not fines or penalties. Rather, degradation fees are part of the City's own permitting fee structure that it has implemented. (*See Cheaks Dir.*, City/CUB Ex. 3.0 at 11:195-205) Indeed, in data request responses, the City has admitted that Peoples Gas cannot avoid incurring degradation fees in the course of performing its AMRP and its daily non-AMRP operations and maintenance work. (*See City-CUB Responses to JA CC 2.54 and 2.55*, attached hereto as Exhibit 2) Moreover, while the AG/City's Motion concerns the Liberty Audit and the AMRP, the data on Peoples Gas' work in moratorium streets referenced by AG/City is not only for AMRP work, but for all of Peoples Gas' work combined, and the percentages cited represent the percentage of Peoples Gas' own work projects that are in moratorium streets, not of all work performed in moratorium streets in the City as they are characterized in the Motion. (*See Cheaks Dir.*, City/CUB Ex. 3.0 at 25 and Table 2)

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<sup>3</sup> As noted, Joint Applicants disagree with many AG/City allegations in their testimony and that are repeated in the Motion, but they will not burden this Response with a point-by-point refutation.



Nor has the Joint Applicants' response to a proposed condition from Staff concerning the implementation of recommendations from the Liberty Audit created any change in circumstances requiring an extension of the schedule, as suggested by AG/City. In paragraph 5 of the Motion, AG/City reference language from Mr. Leverett's rebuttal testimony (JA Ex. 6.0 at 16), but fail to explain that this was a proposed modification to the language of a condition recommended by Staff witness Mr. Eric Lounsberry (Staff Ex. 2.0 at 4) concerning implementation of recommendations from the Liberty Audit. This is not a change in circumstances and not an agreement that the Liberty Audit is relevant to the determinations that the Commission must make under Section 7-204, but rather, the normal course of responding to a proposal made by a party in an earlier round of testimony. The modifications suggested by the Joint Applicants were intended to ensure that recommendations would not be implemented if they would lead to imprudent results for Peoples Gas' customers. Also, the proposed modifications to Mr. Lounsberry's language was an effort to ensure that there would be no ambiguity as to how any differences of opinion that may arise between Staff and Peoples Gas concerning a particular recommendation could be resolved during the two-year verification phase of the Liberty Audit ordered by the Commission in its *Peoples Gas 2012 Rate Case* Order.

Further, the AG/City's characterization of this proposed condition as being "meaningless" ignores the fact that, for each recommendation from the final Liberty Audit report, Peoples Gas would either implement the recommendation or provide an explanation why it should not be implemented with an alternative plan to achieve the goals of the recommendation as fully as is possible, practical, and reasonable. In any event, this proposed condition addresses when and under what conditions recommendations from the final Liberty report would be implemented and therefore is not dependent on the substance of the

recommendations themselves. As stated in Mr. Leverett's direct testimony (JA Ex. 1.0 at 16), Peoples Gas will remain an Illinois public utility subject to the Commission's decisions. If the Commission's order in this proceeding or a different proceeding requires that the recommendations of the Liberty final audit report be implemented, then that is what Peoples Gas will do, regardless of who its parent company is. Thus, the Joint Applicants' proposed language for this condition also does not support an extension of the deadline to approve the proposed Reorganization pursuant to Section 7-204(d).

Also, AG/City's comparison of the present situation to the extension of time granted in the proceeding before the Michigan Public Service Commission where Wisconsin Energy has applied for the indirect acquisition of Michigan Gas Utilities Corporation<sup>4</sup> is meritless. The circumstances of the Michigan proceeding are inapposite to the present case. As highlighted in the transcript of the hearing considering the requested extension cited by AG/City in footnote 11 of their Motion (attached hereto as Exhibit 3), the only reason the ALJ in that proceeding was able to grant an extension of time was because all the parties stipulated to a change in the start date of the 180-day time period for determination of the application that the ALJ was required to establish under Michigan law. Under the rules and law governing the Michigan proceeding, the ALJ determined that she was allowed to move the start date of the statutory period under her authority to amend the schedule as provided by law because a statutory deadline under Michigan law is a waivable right, which was so waived by the parties' stipulation. (Exhibit 3 at 55:9 – 56:6, 58:1-16) Here, not only have the parties not stipulated to an extension of the schedule, but the law governing the deadline for this proceeding is different than in Michigan. Section 7-204(d) requires that the Commission issue its determination within 11 months of the application being filed, barring specific standards for an extension of that deadline being met. As explained

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<sup>4</sup> That proceeding also involves the transfer of control of Wisconsin Public Service Corporation.

in this Response, the standards for such an extension have not been met, and thus the AG/City's Motion should be denied.

Accordingly, AG/City have failed to demonstrate that an unforeseeable change in circumstances has occurred since the Application was filed on August 6, 2014, as is required to extend the schedule in this proceeding under Section 7-204(d). For this reason, therefore, the Commission should deny AG/City's Motion.

**II. The Liberty Audit And Peoples Gas' Ongoing Management And Implementation Of The AMRP Are Issues That Exist Independent Of And Are Not Relevant To The Commission's Approval Of Wisconsin Energy's Acquisition of Integrys' Common Stock Under Section 7-204**

As expressed by AG/City in their Motion, they want Liberty's preliminary report and testimony reacting to it made part of this proceeding in order for the Joint Applicants to address how they will implement Liberty's recommendations to *improve* existing AMRP performance. According to AG/City, the issue is to ensure that "needed and appropriate changes in the operation and management of the AMRP" as may be recommended by Liberty will occur. (Motion at ¶ 6). While the Joint Applicants agree that addressing Liberty's final results and recommendations to improve the management and implementation of AMRP is important, doing so is beyond the appropriate scope of this Section 7-204 proceeding.

The purpose of a Section 7-204 proceeding is for the Commission to determine whether a proposed reorganization will adversely affect a public utility's ability to perform its duties under the Act. The specific findings that the Commission must make under Section 7-204 include that a reorganization will not "diminish" a utility's ability to perform its duties under the Act and provide service to customers, "significantly impair" its ability to raise capital and maintain a reasonable capital structure, have a "significant adverse effect on competition" in markets over which the Commission has jurisdiction, or cause "adverse rate impacts." See 220 ILCS 5/7-

204(b)(1), (4), (6), and (7). Thus, as the plain language of Section 7-204 makes clear, the purpose of this proceeding is not to evaluate and determine how to improve the ongoing operations of the Gas Companies. Yet, that is exactly the outcome sought in the AG/City's Motion – to transform this proceeding into an investigation and workshop on improving Peoples Gas' AMRP performance. Accordingly, AG/City's Motion should be denied for this reason, as well<sup>5</sup>.

Not only would shoe-horning the Liberty Audit and a discussion of its substantive recommendations into this proceeding be improper under Section 7-204, but doing so would be duplicative and unnecessary, as well. When it directed that the AMRP investigation be undertaken, the Commission established a process for how the final report and its recommendations would be addressed, ordering that they be filed with supporting testimony in a future rate case. *See Peoples Gas 2012 Rate Case* Order at 61 (incorporating the procedures set forth in Exhibit 1, hereto). Likewise, the Commission provided for a two-year verification period during which Liberty would work with Peoples Gas to ensure the proper implementation of its recommendations, again followed by the filing of a final report with supporting testimony in a future rate case. *Id.* Thus, while the AG/City's Motion seeks to instill the notion that this proceeding will provide the Commission with its only opportunity to address the Liberty Audit recommendations and their implementation, nothing could be further from the truth. While the Joint Applicants agree that it will be important to address the substantive findings and

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<sup>5</sup> Indeed, while the AG and City spent a great deal of their direct testimony on “harsh criticisms” of Peoples Gas' past conduct of the AMRP (Motion at ¶¶ 4, 7-10), this is the reason why the Joint Applicants did not submit a point-by-point rebuttal on these past occurrences. As stated in the testimony of Joint Applicants' witness David Giesler, the Joint Applicants “strongly disagree” with the AG and City witnesses' “characterizations of Peoples Gas' management and operation of the AMRP, as well as their specific anecdotes,” and the Joint Applicants' “decision not to provide a detailed response to their specific claims does not mean that the Joint Applicants agree that they are well-founded or otherwise acquiesce to those claims.” (JA Ex. 10.0 at 2-3) The Joint Applicants chose this approach because these claims by the AG and City concern past actions or current operations by Peoples Gas that are unrelated to the proposed Reorganization at issue in this proceeding. (*See id.*)

recommendations made by Liberty, the proper venue for doing so is in the procedures provided for by the Commission in its *Peoples Gas 2012 Rate Case* Order, not in this Section 7-204 proceeding. Moreover, proceedings required by Section 9-220.3 of the Act (220 ILCS 5/9-220.3) and Peoples Gas' Rider QIP, Qualifying Infrastructure Plant, are additional proceedings in which the AMRP investments will be reviewed. While not directly designed to address the Liberty report, to the extent relevant, findings and recommendations from the Liberty report may be considered in those proceedings.

Alternatively, if the Commission is concerned about ensuring that there is a venue for the parties to address the results of Liberty's investigation phase before Peoples Gas' next rate case, a better option would be for the Commission to initiate a separate docket for the purposes of examining the Liberty investigation report. The opening of such a docket would provide an orderly and comprehensive means for the Commission, the Joint Applicants, Staff, and interested parties that choose to intervene in that proceeding to address any concerns raised by the Liberty investigation report without the statutory deadline and limitations of Section 7-204 to worry about. This alternative also would prevent compromising the purpose of the present Section 7-204 proceeding. Moreover, any order issued by the Commission in this proceeding would be binding on Peoples Gas whether or not there is a change in the corporate ownership of the utility approved in this proceeding. *See* 220 ILCS 5/7-204(b)(5); JA Ex. 1.0 at 16.

The bottom-line is that AG/City have failed to cite any evidence that the change in holding companies and corporate ownership of Peoples Gas has any relationship to or will have any impact upon how the ongoing Liberty investigation and how its ultimate recommendations will be implemented. The Liberty Audit, including its verification phase designed to ensure the proper implementation of Liberty's recommendations, is governed by the Commission's Order in

the *Peoples Gas 2012 Rate Case*. As Joint Applicants witness Mr. Leverett has testified (JA Ex. 1.0 at 16; JA Ex. 6.0 at 31-32), pursuant to the requirement of Section 7-204(b)(5), the Joint Applicants have committed to Peoples Gas remaining subject to all applicable laws, regulations, rules, decisions, and policies governing its regulation. Accordingly, the Joint Applicants have committed to comply with the Commission's Order in the *Peoples Gas 2012 Rate Case* concerning the Liberty investigation. Likewise, the Joint Applicants will comply with any Commission-ordered condition concerning the Liberty Audit in this proceeding or an order issued by the Commission concerning the Liberty Audit in any future rate case or other proceeding.

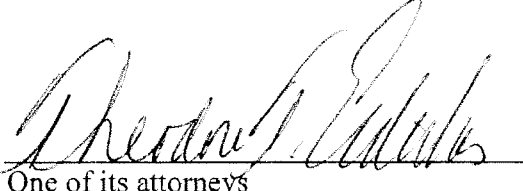
Accordingly, the proposed Reorganization will not have any adverse impact with respect to the implementation of the Liberty Audit recommendations, which should be addressed substantively in future rate case proceedings as provided for by the Commission in its *Peoples Gas 2012 Rate Case* Order or, alternatively, in a separate proceeding initiated by the Commission. Addressing the substance of any Liberty Audit recommendations in this proceeding would be beyond the scope of Section 7-204 and would be needlessly duplicative of already established procedures for addressing those recommendations. Thus, AG/City's Motion should be denied.

### **CONCLUSION**

For the foregoing reasons, the Commission should deny the AG/City's Motion to Extend the Schedule.

Dated: January 12, 2015

WISCONSIN ENERGY CORPORATION

By:   
One of its attorneys

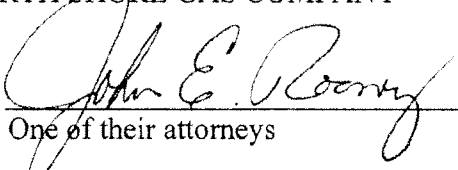
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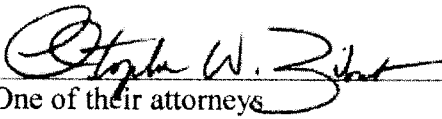
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